IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 17372 of 2006(R)

PETITIONER:

**M/S. KAIRALI TOURIST ENTERPRISES PVT.LTD
THODUPUZHA P.O., IDUKKI DISTRICT, REPRESENTED BY
ITS MANAGING DIRECTOR SRI.MANOJ JOSE,
S/O. JOSE KUTTIYANY.**

**BY ADV. SRI.N.N.SUGUNAPALAN (SR.),
SRI.P.I.GEORGEKUTTY,
SRI.ABRAHAM MATHEW (VETTOOR).**

RESPONDENTS:
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1. **STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE SECRETARY TO GOVERNMENT OF KERALA,
INDUSTRIES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.**

3. **KERALA FINANCIAL CORPORATION,
VELLAYAMBALAM, THIRUVANANTHAPURAM,
REPRESENTED BY ITS MANAGING DIRECTOR.**

4. **UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF INDUSTRY
DEPARTMENT OF INDUSTRIAL DEVELOPMENT, NEW DELHI.**

5. **THE INDUSTRIAL DEVELOPMENT BANK OF INDIA
(IDBI) REGIONAL OFFICE, PANAMPILLY NAGAR,ERNAKULAM
REPRESENTED BY ITS MANAGER.**

W.P.(C). NO.17372/2006:

6. THE RESERVE BANK OF INDIA,
ZONAL OFFICE, THIRUVANANTHAPURAM, REPRESENTED BY ITS MANAGER.

BY ADV. SRI.M.C.SEN (SR.),
SRI.V.B.UNNIRAJ, S.C, KFC,
SRI. JOBY CYRIAC, CGC,
SRI. P. JACOB VARGHESE, SC, R.B.I,
GOVT. PLEADER SMT. N. SUDHADEVI,
SRI. N.N. SUGUNAPALAN (SR.).

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/03/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.17372/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE CIRCULARS ISSUED BY THE INDUSTRIAL DEVELOPMENT BANK OF INDIA REGARDING THE CEILING RATE OF INTEREST CHARGABLE BY THE PRIMARY LENDERS DTD. 01/08/1990.

EXT.P.2: COPY OF THE CIRCULAR ISSUED BY THE INDUSTRIAL DEVELOPMENT BANK OF INDIA (IDBI) REGARDING THE RATE OF INTEREST CHARGABLE UPON REFINANCE LOAN DTD. 06/04/1984.

EXT.P.3: COPY OF THE LETTER ISSUED BY THE R.3. INTIMATING SANCTIONING OF 1ST INSTALLMENT OF CIS OF RS. 6,49,500/- DTD. 06/01/1990.

EXT.P.4: COPY OF THE COMMUNICATION ISSUED BY THE R.3. FOR SUBMITTTING CLAIM FOR THE 2ND INSTALLMENT OF THE SUBSIDY DTD. 23/05/1990.

EXT.P.5: COPY OF THE LETTER ISSUED BY THE R.3. SHOWING THE STATEMENTS OF ACCOUNTS WITH DETAILS OF ADJUSTMENTS DTD. 31/08/1995.

EXT.P.6: COPY OF THE CENTRAL INVESTMENT SUBSIDY SCHEME 1971 AND ITS GUIDELINES ISSUED BY THE R.4.

EXT.P.7: COPY OF THE ORDER PASSED BY THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE REGARDING DISBURSEMENT CIS TO M/S. STONAGE TOURIST COMPLEX IDUKKI.

EXT.P.8: COPY OF THE LETTER ISSUED BY THE R.4. TO THE R.2. REGARDING REIMBURSEMENT OF SUBSIDY ON ACCOUNT OF THE PETITIONER'S UNIT DTD. 14/03/1997.

EXT.P.9: COPY OF THE COMMUNICATION FROM THE R.4. TO THE DIRECTOR OF INDUSTRIES WITH RESPCT TO THE SUBSIDY TO THE PETITIONER'S UNIT DTD. 15/04/1997.

EXT.P.10: COPY OF THE REPRESENTATION SUBMITTED TO THE HONOURABLE MINISTER FOR FINANCE DTD. 18/03/1995.

EXT.P.10.A: COPY OF THE COMMUNICATION ISSUED BY THE R.3. TO THE COMMISSIONER SECRETARY (FINANCE) TRIVANDRUM DTD. 27/05/1996.

EXT.P.11: COPY OF THE JUDGMENT IN CIVIL APPEAL NO. 6240/1994 PASSED BY THE HONOURABLE SUPREME COURT OF INDIA DTD. 05/12/1995.

W.P.(C). NO.17372/2006:

EXT.P.12: COPY OF THE ORDER PASSED BY THE DIVISION BENCH OF THIS HONOURABLE COURT IN WRIT APPEAL NOS. 540 AND 2203 OF 2004 DTD. 17/12/2004.

EXT.P.12.A: COPY OF THE COMMON JUDGMENT IN WRIT APPEAL NO.540/2004 PASSED BY THE DIVISION BENCH DTD. 01/06/2005.

EXT.P.13: COPY OF THE MEMORANDUM OF GRIEVANCES ALONG WITH THE 25 DOCUMENTS ANNEXED THERETO SUBMITTED BY THE PETITION DTD. 26/06/2005.

EXT.P.14: COPY OF THE NOTICE ISSUED BY THE R.3. TO THE PETITIONER DTD. 19/12/2005.

EXT.P.15: COPY OF THE REPLY SENT BY THE PETITIONER TO THE R.3. DTD. 02/01/2006.

EXT.P.16: COPY OF THE MINUTES OF THE BOARD MEETING OF THE R.3. HELD ON 24/02/2006 ALONG WITH THE FORWARDING NOTE TO THE SAME OF THE ASST: GENERAL MANAGER (P&A) DTD. 28/02/2006.

EXT.P.17: COPY OF THE LETTER ISSUED TO THE PETITIONER BY THE R.3. THROUGH ITS THODUPUZHA BRANCH MANAGER DTD. 07/04/2006.

EXT.P.18: COPY OF THE FABRICATED MINUTES OF THE BOARD MEETING OF THE R.3. DTD. 24/02/2006.

EXT.P.19: COPY OF THE MINUTES OF THE SUBSEQUENT MEETING OF THE BOARD OF THE R.3. DTD. 28/03/2006.

EXT.P.20: COPY OF THE RELEVANT PAGE OF THE DESABHIMANI DAILY DTD. 04/03/2006.

EXT.P.21: COPY OF THE REVIEW PETITION FILED BEFORE THE DIRECTOR BOARD OF THE R.3. DTD. 17/04/2006.

EXT.P.22: COPY OF THE GUIDELINES FOR COMPROMISE SETTLEMENT ON NON-PERFORMING ASSETS ISSUED BY THE RESERVE BANK OF INDIA DTD. 29/01/2003.

EXT.P.23: COPY OF THE CIRCULAR ISSUED BY THE RESERVE BANK OF INDIA DTD. 30/05/2003.

EXT.P.24: COPY OF THE STATEMENT OF ACCOUNT PREPARED BY THE PETITIONER IN RESPECT OF THE LOAN AVAILED OF BY IT FROM THE R.3. AS ON 30/09/2004.

EXT.P.25: COPY OF THE NOTIFICATION FOR SALE OF THE PETITIONERS HOTEL INDUSTRY PUBLISHED IN THE MALAYALA MANORAMA NEWS PAPER DTD. 27/02/2007.

EXT.P.26: COPY OF THE LIST OF THE CIS APPLICATIONS RECEIVED BY THE R.3. BEFORE 31/12/1989 DTD. NIL.

EXT.P.27: COPY OF THE LIST OF THE INDUSTRIES WHICH HAS BEEN SANCTIONED WITH CENTRAL INVESTMENT SUBSIDY WITH RFERENCE TO THE DATE OF SANCTION AND AMOUNT SANCTIONED.

W.P.(C). NO. 17372/2006:

RESPONDENT'S EXHIBITS:

EXT.R3.A: COPY OF THE O.P. NO. 2562/97.

EXT.R3.B: COPY OF THE JUDGMENT DTD. 11/11/2003 IN O.P. NO. 2562/97.

EXT.R3.C: COPY OF THE LETTER DTD. 17/04/06.

EXT.R3.D: COPY OF THE LETTER DTD. 22/01/98

EXT.R3.E: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER.

EXT.R3.F: COPY OF THE STATEMENT OF ACCOUNTS.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 17372 OF 2006-R

JUDGMENT

The petitioner has approached this Court, feeling aggrieved by the omission of the 3rd respondent Kerala Financial Corporation to extend the one-time settlement facility to it, to close a loan availed of by it from the said Corporation. It is also aggrieved by the delay from the part of the K.F.C in adjusting the investment subsidy received by the Corporation. The petitioner also voices its grievance regarding the rate of interest charged by the K.F.C., ignoring the directives issued by the Industrial Development Bank of India. Exts.P1 and P2 are the circulars issued by the I.D.B.I concerning the rate of interest chargeable by the financial institutions, which receive loans from it, for the purpose of re-financing. If the rate provided therein is applied for calculating the interest, the petitioner will get substantial relief in the matter of its liability towards the K.F.C., it is submitted.

2. The claim of the petitioner for investment subsidy is founded on Ext.P6 scheme issued by the Government of India, concerning distribution of investment subsidy. Reference is made to para 5 of the revised scheme at

page 43 of the paper book, dealing with disbursing agencies. The relevant portion of para 5 reads as follows:

> "The Scheme is implemented through the States. The States have been authorised to nominate all India Financial Institutions/State Financial Corporations as disbursing agencies for receiving applications on their behalf, process them and make recommendations to the State Level Committee."

Para 8, deals with the disbursement of subsidy, which reads as follows:

> "In the case of an assisted unit, the disbursement of subsidy may be made in as many instalments as the loans sanctioned by the financial institutions etc., are disbursed. The last instalment of the subsidy, however, shall not be less than 15% of the total subsidy sanctioned and it shall be disbursed only after the unit goes into production."

Finally, reliance is made on para 11, which reads as follows:

> "The various disbursing agencies after making disbursement of subsidy to eligible units shall make reimbursement claims to the State Level Committee. The State Level Committee after satisfying that the subsidy disbursed is in order, shall prefer reimbursement claims to the Central Government. The Central Government, after scrutinising the claims, shall reimburse the claims directly to the disbursing agencies."

Based on the above provisions of Ext.P6, it is submitted that as and when the petitioner makes the investment, the subsidy becomes payable to it. The K.F.C is bound to adjust the amount as and when it becomes due, in the loan account and thereafter, it may claim reimbursement from the State

Government or the Central Government, as the case may be. In this case, the K.F.C adjusted the investment subsidy only when it was actually released to it on 18.9.1997. The said stand of the K.F.C is illegal, it is submitted.

3. On the claim regarding the OTS facility, the petitioner points out that by Ext.P16, the Board of Directors of the K.F.C granted the said facility to it, on condition of payment of Rs.63.63 lakhs. But, by Ext.P18 minutes, the said proposal was not confirmed. Again, the matter was considered by the Board of Directors on 28.3.2006, as evident from Ext.P19 minutes of the meeting. The decision taken on 28.3.2006, which available at page 7 of Ext.P19, reads as follows:

> "The Board discussed in detail the note regarding settlement of account of M/s. Kairaly Tourist Home, Thodupuzha. The OTS amount as per norms is Rs.172.00 lakhs, which is based on the yield method. Principal outstanding in the loan account is Rs.63.63 lakhs. Party's offer for OTS is Rs.40.00 lakhs only. The Board observed that offer of the party is very much below the OTS eligibility as per norms and does not cover even the principal outstanding. Hence the Board rejected the offer of the party."

Going by the above decision, it would appear that the K.F.C was willing to settle the loan account under the OTS scheme, if only an amount of Rs.172 lakhs was paid and the offer of Rs.40 lakhs made by the petitioner was not acceptable to it. Later, by Ext.P17 communication dated 7.4.2006, the

petitioner was informed that its offer of Rs.40 lakhs is too low, when compared to the balance outstanding and the asset value and therefore, it was rejected. The petitioner submits, it should have been allowed to close the loan account paying the amount fixed by the Corporation as per Ext.P16 minutes. It is also pointed out that so far the K.F.C has not informed the petitioner the amount for which it will be permitted to close the loan account under the OTS scheme.

4. The next claim of the petitioner concerns the rate of interest applicable to the loan. According to the petitioner, the K.F.C is bound by the directions of the I.D.B.I., issued in Exts.P1 and P2.

5. In the above facts and contentions mentioned, the petitioner seeks the following reliefs:

> "(i) issue a writ of certiorari or other appropriate writ or direction quashing Exts.P17, P18, P19 and P10(a).
>
> (ii) declare that the petitioner is entitled for the investment subsidy covered by Exts.P8 and P9 and that the 3rd respondent is bound to credit the subsidy due to it at the appropriate stage of the loan disbursement.
>
> (iii) issue appropriate direction to the 3rd respondent to draw up a proper account on applying interest as stipulated in Exts.P1 and P2 and crediting the Central Investment Subsidy payable as per Exts.P8 and P9 at the appropriate stages and to adjust the amount of Rs.22 lakhs under deposit with it towards discharge of such liability and return the industrial unit to the petitioner.

(iv) issue a writ of mandamus or other appropriate writ orders or direction commanding the 3rd respondent to dispose of Ext.P13 memorandum of grievances and claims and Ext.P21 petition after drawing a correct statement of account as above.

(v) to stay all further proceedings initiated by the 3rd respondent for sale of the industrial unit of the petitioner till the disposal of this petition."

6. The 3rd respondent has filed a counter affidavit and also an additional counter affidavit, resisting the prayers in the writ petition. The claim of the petitioner regarding the rate of interest made relying on Exts.P1 and P2 is resisted by submitting that the K.F.C is not bound by the circulars issued by the I.D.B.I. It is raising funds from various sources and it is also pointed out that after 1996 no amount is borrowed by the K.F.C from the I.D.B.I. Further, it is pointed out that the rate of interest of the loan is governed by the agreement executed between the K.F.C and the petitioner. There is no such clause in the agreement that the rate of interest will be varied from time to time, as notified by the I.D.B.I. Regarding the claim of the petitioner concerning the date of adjustment of the investment subsidy, it is submitted that the K.F.C can adjust the investment subsidy only when it is released to it. It is admitted that the K.F.C is one of the agencies nominated by the State Government for implementing the investment

subsidy scheme in terms of Ext.P6. But, it can adjust the loan subsidy amount only when it is paid to it. It is also submitted that the agreement executed with the petitioner does not contain any stipulation regarding the time of adjustment of the investment subsidy. Regarding extension of the OTS facility, the respondents would submit that Ext.P16 decision was never communicated to the petitioner and therefore, it never took effect. It was only a proposal. On the very same day it was considered and by Ext.P18 decision the said proposal was not confirmed. Later, the Board of Directors of the 3rd respondent met on 28.3.2006, as evident from Ext.P19, considered the offer of the petitioner and it was decided that the same is not acceptable. The petitioner was informed of the same by Ext.P17 communication dated 7.4.2006. It is also admitted that the K.F.C has not informed the petitioner for what amount it is willing to close the loan account under the OTS scheme. The K.F.C also submitted that all the claims of the petitioner were considered and rejected by the judgment in O.P.No.2562/1997 by the learned single Judge. The Division Bench in W.A.No.540/2004 has kept open only the claim for OTS facility.

7. The petitioner has filed a reply affidavit, dealing with the contentions of the respondents in their counter affidavits.

8. Heard the learned counsel on both sides. Learned senior counsel

Sri.N.N.Sugunapalan and learned senior counsel Sri.M.C.Sen canvassed the respective contentions on behalf of the petitioner and the K.F.C. Heard the learned Government Pleader for respondents 1 and 2 also.

9. First I will deal with the contention of the petitioner regarding the rate of interest, urged by it, relying on Exts.P1 and P2. The terms of the loan are contained in the agreement executed between the petitioner and the K.F.C. In the absence of any clause in the agreement to the effect that Exts.P1 and P2 will apply, the petitioner cannot claim the benefit of those exhibits.

10. The second point raised by the petitioner is concerning the adjustment of subsidy. Going by Ext.P6, the primary liability is that of the State Government to implement the scheme. A financial institution like the K.F.C., nominated by the Government cannot be held liable for disbursing the amount without receiving the same. Going by the scheme, it may appear that the disbursing agency is to disburse the amount due as subsidy and later claim it from the Central Government by way of reimbursement. The relationship between the petitioner and the K.F.C is governed by the terms of the agreement entered into between them. In the absence of any clause in the agreement, incorporating the conditions in Ext.P6, the claim of the petitioner regarding the time of adjustment of the investment subsidy cannot

be enforced.

11. The third and final point to be decided is concerning the extension of the benefit of the OTS scheme to the petitioner. In fact, going by the judgment in W.A.No.540/2004, it may appear that this was the only point kept open by the Division Bench, to be considered by the K.F.C. Going by the materials in this writ petition, I feel that the K.F.C was bound to inform the petitioner the amount for which it was ready to settle the loan account and give it a chance to pay the amount. Though the K.F.C had decided that it was ready to settle the loan account, if the petitioner pays Rs.172 lakhs, the said decision was not intimated to the petitioner. It was only told that its offer is not acceptable to the K.F.C. I think, the same was not a proper response from the side of the K.F.C., on the claim of the petitioner for extending the benefit OTS scheme. Accordingly, the K.F.C is directed to inform the petitioner the amount for which the loan account could be closed, before 31.3.2007. The petitioner shall be given time up to 30.4.2007. While informing the petitioner about the amount due from it, the K.F.C shall specify the amount that will be payable under the OTS scheme, as on 30.4.2007. The petitioner may pay the amount and close the loan account on or before 30.4.2007. If it fails to close the loan account within the said time limit, the K.F.C will be free to proceed to recover the amount,

as permitted by the Division Bench in Ext.P12(a) judgment.

The Writ Petition is disposed of as above.

21st March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/